RESEARCH HIGHLIGHT

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INVESTIGATING CLAIMS AGAINST HOME AND PROPERTY INSPECTORS

BACKGROUND

One of the fastest growing sectors in the housing market is the home/property inspection sector. The home/property inspection sector includes sole operators, firms and franchised businesses.

The majority of home and property inspectors (HPIs) work on residential inspections. Home and property inspectors typically provide services related to potential home and property purchasers, existing home and property owners, financial institutions, and real estate agents for the following purposes:

1. Pre-purchase inspection of existing homes
2. Pre-delivery review of properties
3. Pre-renovation consultation for properties
4. Property management
5. Provision of legal testimony/opinion
6. Supervision of new construction
7. Problem solving related to structure/conditions of homes and other small buildings
8. Inspections in response to insurance claims
9. Pre-sale inspections

Complaints and Errors and Omissions Insurance

HPIs carry out their professional duties according to varying provincial standards of practice, and from time to time face complaints and legal action from clients. In many cases, complaints are handled to the satisfaction of the parties. Legal action typically stems from the HPI providing a written report and the client later discovering there is a defect in the building that is not reflected in the written report. In some cases, HPIs will pay for their own legal expenses, and in other cases, they will be covered by errors and omissions insurance.

Legal action not only has an impact on the individual inspector, but also has consequences on the industry at large. Insurance companies that provide errors and omission insurance for this sector are responding to legal action by increasing rates. An increase in errors and omission insurance is making it very difficult for individual home and property inspectors to continue to operate with insurance coverage.

Recently, the main private insurance company that has represented the industry withdrew the errors and omission insurance for HPIs. While some HPIs are purchasing errors and omission insurance from other insurance companies, others are working without any coverage. This situation is putting home inspectors at risk.

The "Review of Complaints Levied Against Home and Property Inspectors" research project examines complaints against HPIs and the impact of loss of errors and omissions insurance for the sector, and makes recommendations to improve the situation for the industry, for HPIs and for consumers.

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METHODOLOGY

To conduct the research project, the following steps were taken:

1. A steering/review committee was established.
2. A review of existing case law and related jurisprudence on home inspection and insurance claims was undertaken.
3. A review of existing insurance claims was undertaken. The data available summarized the nature of the insurance claims, the estimated costs of the claim, the total costs of the judgment, the certificate number, the province where the claim took place and the date of the claim.
4. Other related documents such as contracts, literature, standards of practice and occupational standards were reviewed.
5. Telephone interviews were conducted with experts in the home inspection sector who were familiar with insurance claims registered against home inspectors.

The report does not include complaints made against the sector that would be registered with organizations such as the Better Business Bureau since this data is not available for analysis. In some cases, home inspectors may respond to client's complaints directly, and these comments would not be registered with any organization or officially recorded in insurance data.

OVERVIEW OF INDUSTRY

The national association for the sector is called the Canadian Association of Home and Property Inspectors (CAHPI). CAHPI encompasses provincial and regional associations with the mandate to promote the interests of Canadian home and property inspectors on a national level.

Currently, there are approximately 1,040 HPIs working full time as inspectors who are members of a provincial association. However, there is no mandatory requirement for an inspector to belong to a provincial association.

As this sector is not regulated under any provincial or federal legislation, provincial associations have taken the lead to adopt comprehensive standards of practice.

CAHPI has been involved in several national initiatives with the goal of improving professionalism in the sector.

Overview of Insurance Coverage

Currently, there is no mandatory obligation for a home and property inspector to have errors and omission insurance in Canada. However, promotion materials advising consumers on hiring a reputable HPI strongly advocate hiring a HPI with proper insurance coverage. Other literature on hiring home inspectors suggests that consumers hire a HPI who is a member of a provincial association, since it is typically a condition of membership to have errors and omission insurance. However, it is a reality that many HPIs do not have any errors and omission insurance.

CAHPI is currently working with the insurance industry to resolve the situation.

Analysis of Insurance Claim Data

To provide some perspective on the types of claims levied against members of CAHPI, the claims filed with the primary insurance company from 1997 to 2003 are presented in Table 1. The data shows that there were 240 claims made against the industry in that time period. The data reveals that most of the claims are based on structural issues such as cracks in the foundation. (This may also include water infiltration through the foundation.) From 1997 to 2003, there were 30 potential claims against inspectors pertaining to foundation structure. Interviews with industry experts substantiate the nature of these claims.

Jurisprudence/Case Studies

The foundation of the service provided by the home inspector is the advice given regarding the condition of the home. Most legal claims against home inspectors plead on the context of the tort of negligent misrepresentation.

The report summarizes several legal cases against HPIs. The findings and comments noted in these cases present a few of the possible risk-assessment conditions. Studying these cases and careful consideration of areas of risk reduction can help to reduce the rate of potential claims against the home inspector and their insurer.

Table 1: Errors and omissions claims against CAHPI home inspectors for the years 1997-2003		
Claim Item	**Region**	**Total**
Structural – Foundation(e.g. Cracks)	B,O,Nf,B,O,Q,O,Q,O,O,O,O,O,O,O,O,Q,Q,Q,O,O,O,O,N,A,O,N,Q,Q,O,Q	30
Water- Basement	O,O,B,B,A,Q,Q,O,O,O,Q,Q,O,Q,B,Q,O,O,Q,O,O,O,A,O,O,O,O,O,Q	29
Structural – General	Q,Q,O,O,O,NB,A,O,O,O,Q,O,O,Q,O, O,Q,O,O,	19
Water – Roof	Q,O,Q,Q,Q,Q,O,Q,O,O,A,Q,A,Q,Q,Q,Q	17
Structural –Roof	Q,B,O,Q,O,O,Q,Q,O,O,Q,O,O,O,O	15
Roofs (e.g., Shingles)	Q,Q,S,O,O,O,O,O,Q,Q,O,Q,O	13
Pests/Vermin Infestation	B,O,O,O,O,O,B,O,O,O,A,O,NB	13
Furnace/Duct Inadequate	B,O,O,Q,O,O,O,O,N,O	10
Chimney	B,Q,O,Q,O,Q,N,A,O	9
Electrical	Q,O,A,A,O,O,O,NB	8
Structural – Floor	Q,Q,Q,O,A,O,N	7
Windows Inadequate	O,O,O,Q,O,N,Q	7
Structural – Rotten	Q,O,Q,O,A,O	6
Mold	O,A,O,O,O	5
Well/Water Supply	B,Q,O,O	4
Code Violations –Undetected	O,O,O,O	4
Plumbing Faulty	O,Q,O	3
Structural-Balcony	Q,A,Q	3
Septic Tank Damage	O,Q,N	3
Oil Tank Inadequate	O,O,N	3
Vendor Missed Sale	O,O	2
Fire Damage Undetected	O,O	2
Water – Deck/Balcony	B,O	2
Moisture	O,Q	2
Fireplace	A,N	2
Water- Main Floor	B,B	2
Wall Inadequate	O,N	2
Appliance – Stove/Heater	Q,N	2
Structural – Stairs	O	1
Bricks	Q	1
Siding	B	1
Pyrite Under Foundation	Q	1
Gas Related	O	1
Uninsulated Cottage	O	1
Insulation Inadequate	Q	1
Soil with Inadequate Moisture Level	Q	1
Drainage – Inadequate	Q	1
UFFI Undisclosed	O	1
Ventilation	A	1
Jacuzzi Water Leak	O	1
Bathtub Inadequate	N	1
Bathroom – Rotten	O	1
Oil Contamination	O	1
Improper Zoning	N	1

P – PEI; N- Nova Scotia; NB- New Brunswick; Nf – Newfoundland; O – Ontario; Q- Quebec; S- Saskatchewan; A-Alberta ;B - British Columbia.

Source: Claims Data provided by CAHPI

IMPACT

Errors and omissions insurance premiums for the sector have continued to rise and the underwriting standards have become significantly tougher.

As of the date of this report, fewer companies are available to insure home inspectors for errors and omissions. This is forcing a significant change in the Canadian home inspection market, with a possible result of a large number of home inspectors leaving the profession. This could influence insurance claim rates in the future, or reasonable and timely access to a home inspector.

RECOMMENDATIONS

The following recommendations are suggested in the consultant's report for the home/property inspection sector to address concerns with errors and omissions insurance and to reduce complaints and claims against HPIs.

Survey

1. Conduct a survey to determine how HPIs (members and nonmembers) currently respond to complaints.

Training/Education

2. Provide mandatory courses that focus on water infiltration for foundations and roofs, and report writing courses, that could be taught and provided by colleges or accredited institutions. These courses are of a particular interest because of legal action in these areas.
3. Establish an independent committee to critically review the courses provided by the provincial associations for its members. Some of the key questions the committee should examine are as follows:
   a. To what extent should the provincial associations be in the business of providing courses?
   b. To what extent are existing courses meeting the general principles of adult learning (e.g., clear learning objectives, evaluation)?
   c. To what extent should provincial associations provide workshops or information sessions rather than courses?
   d. To what extent should the provincial associations work with community colleges and accredited institutions to provide training?

Standards of Practice

4. Revise standards of practice to clearly state that the client must sign the contract before the inspection is conducted. If the contract is not signed prior to inspection, this should null and void the insurance.
5. Develop a standard client document that explains the role of the HPI and what they will focus on during the inspection. This document needs to be signed by the client prior to the inspection to ensure that the client is aware of the role of the HPI. The standard document should be national in scope.

6. Revise standards of practice to reflect the national occupational standards.

7. Update the national occupational standards to ensure that the core competencies and knowledge truly reflect the business. For example, some inspectors were sued for inspecting fireplaces and the national occupational standards exclude this activity.

8. Develop a national standard of practice under the banner of the Canadian Association of Home and Property Inspectors (CAHPI) and no longer use American Society of Home Inspector (ASHI) practices.

Contracts/Agreements

9. Establish a committee to develop a model standard agreement for the industry. The model standard agreement should be approved by the industry and reflected in its bylaws. A lawyer should also review model agreements for applicability to each provincial jurisdiction.

Risk Management

10. The industry should introduce a risk management strategy. This includes focusing on:
    - A Written Report
    - Vendor Disclosure Statement
    - Summary of Defects
    - Digital Documentation
    - Dispute Resolution
    - Clear Standards of Practice
    - Standardized Contracts

11. The industry should establish a subcommittee to look at issues and identify other risk management strategies.

12. The industry should establish a committee to examine the option of having the government regulate the industry, or for the sector to establish a self-regulatory framework, which would form part of the risk management strategy.

Consumer Advocacy

13. Establish consumer protocol that includes:
    - The consumer signing off on a document that explains the role and scope of home inspectors
    - The consumer signing the contract prior to the inspection
    - Posting a sample contract on the website
    - Ensuring that the client be present during the inspection, or that a reliable replacement is provided
    - The home inspector taking pictures of issues that may be of concern
    - Revising national and provincial websites to inform the consumers of this new protocol

Adopting these recommendations and continuing to make progress on national initiatives, particularly with respect to certification, will reduce the number of complaints and insurance claims. Taking action on the recommendations will improve the home inspection profession significantly and will reduce the risk to members of the profession and to the consumers they serve.

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